IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4259 OF 2006

Sudhir Rangrao Khade)
Age : 32 years,)
R/at: 3/A/17, Nirmal Park,)
Padmavati, Pune.) ...Applicant

V/s.

The State of Maharashtra)
(At the instance of C.I.D./)
F.S. Pune)) ...Respondent

Mr.Niranjan Mundargi for the Applicant.
Mr.Rajesh More, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 15, 2007

JUDGMENT :-

1. Heard the learned Senior Counsel for the applicant and the learned APP for the State.

2. This is a second application for bail filed by the applicant who was arrested on 29th April, 2005 for offence punishable under Section 302 read with Section 34 of the IPC. His earlier application was rejected by this Court by order dated 15th February, 2006.

3. The learned Senior Counsel appearing on behalf

of the applicant has submitted that other accused has been released on bail by this Court by order dated 28th July, 2006. He has submitted that the allegations that the material which is available with the prosecution in respect of the other co-accused Faiyaz Ahmed Mohammed Umar Shaikh and the present applicant is identical. The learned Counsel submitted that however, this Court (Coram : R.S. Mohite, J.) by order dated 28th July, 2006 was pleased to grant bail to the other co-accused. The learned Senior Counsel, Shri Mundargi, therefore, submitted that the present applicant is entitled to be released on bail on the ground of parity. He submitted that this is a change in the circumstance and therefore, he has filed this criminal application for bail. He invited my attention to the order passed in the application filed by the co-accused Faiyaz Shaikh. He submitted that initially the applicant was shown as a witness in the present case and he had identified the assailant. However, subsequently investigation was transferred to the CID and therefore, the persons who are initially shown as accused were discharged and present applicant and others were shown as accused. He

submitted that there is inherent contradiction in the prosecution case and at this stage, the applicant was entitled to be released on bail. He further submitted that the writ petition was pending in this court against the order of discharge by the trial court. He submitted that in any event, the decision in the said writ petition one way or the other would still not inconsistent with the prosecution case. He submitted that therefore, the applicant was entitled to be released on bail. He further submitted that since the said writ petition was pending in this Court, the trial was not likely to commence in the near future.

4. The learned APP, on the other hand, has invited my attention to the affidavit-in-reply which is filed by the Deputy Superintendent of Police, CID, M.S., Pune. There it has been mentioned that the present applicant has been identified by the complainant. He also invited my attention to the other material which is on record against the present applicant.

5. After having given my anxious consideration to

the material on record, I am of the view that no case is made out by the applicant for grant of bail. The allegation against the present applicant is that he had conspired alongwith co-accused in committing the murder of Faizullah Khan. In the order dated 28th July, 2006 passed by brother R.S. Mohite, J., it has been observed that no identical parade had been held in respect of eye witness Dinesh. I have perused the record and from the record, it can be seen that in fact, the present applicant had been identified by the said witness though there is some discrepancy in the test identification parade. Merely because there is some discrepancy in the test identification parade, at this stage, it is not possible to discard the said material which is on record. The allegation against the present applicant is that he alongwith co-accused had given a contract to kill Faizullah Khan and had succeeded in their plan and had also further succeeded in initially deceiving the police by acting as an eye witness to the alleged murder. In such circumstances, it is not possible to grant bail to the applicant as there is every possibility that he may tamper with the evidence.

. The application for bail is rejected.

(V.M. Kanade, J.)